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APR 11 2001

GENERAL COUNSEL
OF COPYRIGHT

In the Matter of:)	
DIGITAL PERFORMANCE RIGHT)	Doc. Nos. 96-5 CARP DSTR
IN SOUND RECORDINGS AND)	and 2000-9 CARP DTRA 1 & 2
EPHEMERAL RECORDINGS)	

MOTION FOR LEAVE TO SERVE CONFIDENTIAL CARP REPORT

The Recording Industry Association of America, Inc. ("RIAA"), hereby requests leave to serve parties who are entitled to receive Restricted Protected Materials in Doc. No. 2000-9 CARP DTRA 1 & 2 with a copy of the Confidential CARP Report, dated November 12, 1997 ("Confidential Report"), from the subscription services statutory licensing proceeding (Doc. No. 96-5 CARP DSTR).

At the conclusion of the subscription services proceeding, the CARP for that proceeding granted RIAA's request that the Confidential Report be made available to future CARPs. *See* Order of November 24, 1977, at Attachment A. Consistent with the terms of that Order, RIAA has today filed the Confidential Report as part of its direct case in Docket No. 2000-9 CARP DTRA 1 & 2. *See* RIAA Exhibit No. 085 DR. RIAA believes that the Confidential Report also should be served on the other parties to that proceeding, at least those entitled to receive Restricted Materials. However, under the terms of the Protective Order in the subscription services proceeding, RIAA is not permitted to serve them.

RIAA attempted to gain consent to serve the Confidential Report as Restricted Protected Materials in this proceeding from each of the three subscription services that were parties in Docket No. 96-5 CARP DSTR. *See* Attachment B. One of the three

services, Music Choice (who also is a party in Docket No. 2000-9 DTRA 1 & 2) granted consent, as long as service of the Confidential Report is limited to outside counsel and is subject to the strictest terms of the protective order entered in Docket No. 2000-9 DTRA 1 & 2. *See* Attachment C. However, the remaining two (Muzak and DMX) have not responded to RIAA's request. Muzak, which filed an earlier notice to participate in Docket No. 2000-9 but did not file a notice to submit a direct case, has new counsel who was unable to see the Confidential Report in order to consider the request. *See* Attachment D. DMX is a party in Docket No. 2000-9 DTRA 1 & 2 and filed a notice saying that it would submit a direct case.

Protection of confidentiality equivalent to that applicable to the subscription services proceeding is available under the Protective Order that governs Docket No. 2000-9 CARP DTRA 1 & 2. *See* Order of March 29, 2001. RIAA proposes that only those individuals who have access to Restricted Protected Materials in Docket No. 2000-9 CARP DTRA 1 & 2 be given access to the Confidential Report, and that the provisions of the March 29 Protective Order apply to the distribution of the Confidential Report.

Respectfully submitted,

RECORDING INDUSTRY ASSOCIATION
OF AMERICA, INC.

By: Michele J. Woods

Robert Alan Garrett

Ronald A. Schechter

Michele J. Woods

Jule L. Sigall

Brad R. Newberg

ARNOLD & PORTER

555 Twelfth Street, N.W.

Washington, D.C. 20004

April 11, 2001

COPYRIGHT ARBITRATION ROYALTY PANEL

In the Matter of

Determination of Statutory License
Terms and Rates for Certain Digital
Subscription Transmissions of Sound
Recordings

Docket No. 96-5 CARP DSIRA

ORDER

Under consideration are the Memorandum of the Recording Industry Association of America concerning designation of a Public Version of the Panel's Report, filed on November 19, 1997, and the response of the Services filed on November 24, 1997.

The Copyright Act requires Copyright Arbitration Royalty Panels to act on the basis of, inter alia, "prior arbitration panel determinations." 17 U.S.C. 802 (c). This being so, that portion of RIAA's request that this Panel's Confidential (Non-Public) Report be made available to future Copyright Arbitration Royalty Panels IS GRANTED.

In all other respects, RIAA's requests ARE DENIED.

Lenore G. Ehrig
The Honorable Lenore G. Ehrig
Chairperson

Thomas A. Fortkort
The Honorable Thomas A. Fortkort

DATED: November 24, 1997

FROM: Lenore G. Ehrig
0202 707 8366PHONE NO. : 202 667 9560
U S COPYRIGHT OFFICENov. 24 1997 05:36PM P2
1.124/02 1.122 1.002/002

COPYRIGHT ARBITRATION ROYALTY PANEL

In the Matter of

Determination of Statutory License
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Docket No. 96-5 CARP DSIRA

ORDER

Under consideration are the Memorandum of the Recording Industry Association of America concerning designation of a Public Version of the Panel's Report, filed on November 19, 1997, and the response of the Services filed on November 24, 1997.

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In all other respects, RIAA's requests ARE DENIED.

Lenore G. Ehrig
The Honorable Lenore G. Ehrig
Chairperson

Thomas A. Fortkort
The Honorable Thomas A. Fortkort

DATED: November 24, 1997

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ROBERT ALAN GARRETT
(202) 942-5444

VIA FAX & MAIL

March 13, 2001

Bruce D. Sokler, Esq.
Fernando R. Laguarda, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Counsel for Music Choice

Seth D. Greenstein, Esq.
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005
Counsel for DMX

Jon L. Praed, Esq.
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004
Counsel for Muzak

Dear Colleagues:

At the conclusion of the subscription service statutory license proceeding (Docket No. 96-5 CARP DSTRA) the Copyright Arbitration Royalty Panel (CARP) granted RIAA's request that the Panel's Confidential (Non-Public) Report be made available to future CARPs. *See* Order of November 24, 1997 (copy attached). Consistent with the terms of that Order, we intend to submit the Confidential Report to the CARP in the upcoming webcaster arbitration (Docket No. 2000-9 CARP DTRA 1&2).

I am writing to request your consent to our serving the Confidential Report on all parties in the webcaster arbitration. We will request that the Confidential Report be

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March 13, 2001

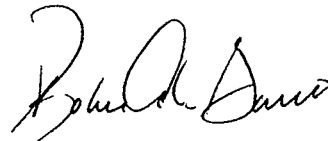
Page 2

treated with the highest level of protection under the protective order that is adopted by the Copyright Office, and that only the CARP in the webcaster proceeding, the Copyright Office, and outside counsel to parties in the webcaster proceeding have access to it.

We wish to make the Confidential Report available to the parties when we exchange direct cases on April 2, 2001. Accordingly, we would appreciate your response to this request by March 20, 2001.

Please feel free to call me if you would like to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Alan Garrett". The signature is fluid and cursive, with the first name "Robert" being more prominent.

Robert Alan Garrett

Attachment

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Fernando R. Laguarda
Direct dial 202 434 7347
laguarda@mintz.com

202 434 7300
202 434 7400 fax

April 4, 2001

BY FACSIMILE

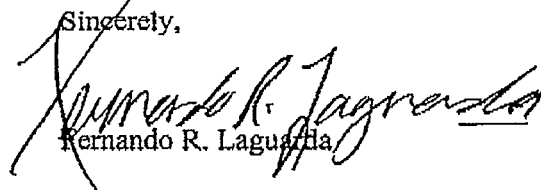
Robert Alan Garrett
Arnold & Porter
555 Twelfth Street, N.W.
Washington, DC 20004-1206

Dear Bob:

In connection with your letter of March 13, 2001, I write inform you that Music Choice consents to your request to serve the Confidential Report from the subscription service statutory license proceeding (Docket No. 96-5 CARP DSTR) in the upcoming arbitration (Docket No. 2000-9 CARP DTRA 1 & 2); provided that service shall be (1) limited solely to outside counsel for the parties and (2) subject to the strictest provisions of the protective order entered in that proceeding.

This consent is without waiver of Music Choice's right to object to the use of the report or the information contained therein.

Sincerely,


Fernando R. Laguarda

cc: Seth D. Greenstein, Esq.
Ronald H. Gertz, Esq.
Paula Calhoun, Esq.

DCDOCS:193630.1(45#M011.DOC)

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VIA FAX AND MAIL

March 27, 2001

Seth D. Greenstein, Esq.
McDermott, Will & Emery
600 Thirteenth Street, N.W.
Washington, D.C. 20005

Bruce D. Sokler, Esq.
Fernando R. Laguarda, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004

Dear Colleagues:

I am writing with reference to my letter of March 13, 2001, in which I asked you to notify us if you consent to our request to serve the Confidential Report from the subscription service statutory license proceeding (Docket No. 96-5 CARP DSTRA) on parties in the upcoming webcaster arbitration (Docket No. 2000-9 CARP DTRA 1 & 2).

In response to that request, we were informed that Muzak has changed counsel and is now represented by Ronald H. Gertz, Esq. of Music Reports, Inc. Mr. Gertz asked to see a copy of the Confidential Report in order to consider our request. Along with this letter, I am providing Mr. Gertz with a copy of the Protective Order for the subscription service statutory license proceeding and am requesting him to execute the certificate required by that Order. When I receive the certificate, I will provide him with a copy of the Confidential Report. If this procedure is not acceptable to you, please notify me before Friday, March 30, 2001.

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March 27, 2001

Page 2

In addition, we have not received your response to our earlier request for consent to include the Confidential Report in our direct case for the webcaster arbitration, subject to the strictest provisions of the protective order that will be entered in that proceeding. We would appreciate it if you would also give us your response promptly since direct cases must be filed on April 11, 2001.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Alan Garrett". The signature is fluid and cursive, with the first name "Robert" and last name "Garrett" clearly distinguishable.

Robert Alan Garrett

cc: Ronald H. Gertz, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to Serve Confidential CARP Report has been filed and served this 11th day of April, 2001, by first class mail and by facsimile, to the following persons:

Bruce D. Sokler
Fernando R. Laguarda
Amy L. Bushyeager
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
701 Pennsylvania Avenue, N.W., Suite 900
Washington, D.C. 20004-2068
Counsel for Music Choice

Bruce G. Joseph
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
*Counsel for Clear Channel Communications,
Inc.; National Religious Broadcasters
Music License Committee*

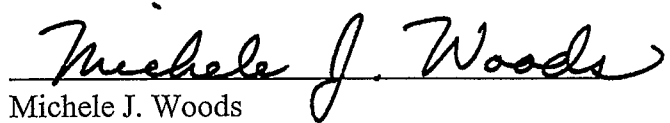
Barry I. Slotnick
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*Counsel for: BET.com; CBS Broadcasting,
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MusicMatch, Inc.; MyPlay, Inc.; NetRadio
Corporation; Radio Active Media Partners,
Inc.; RadioWave.com, Inc.; Entercom
Communications Corporation; Spinner
Networks, Inc.; Susquehanna Radio Corp.;
Univision Online; The Walt Disney
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*Counsel for American Federation of
Television and Radio Artists*


Michele J. Woods

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ROBERT ALAN GARRETT
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VIA FAX AND MAIL

RECEIVED

April 19, 2001

APR 30 2001

**GENERAL COUNSEL
OF COPYRIGHT**

Bruce D. Sokler, Esq.
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Ronald H. Gertz, Esq.
President & CEO
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Peter Laird, Esq.
Edelstein, Laird & Sobel
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Los Angeles, CA 90069

Dear Colleagues:

I am writing with reference to my request for consent to serve the Confidential CARP Report from the subscription service rate arbitration (Docket No. 96-5 CARP DSTRA) on parties in the webcaster arbitration (Docket No. 2000-9 CARP DTRA 1 & 2).

Mr. Gertz has executed and provided to us the certificate required by the Protective Order in Docket No. 96-5 CARP DSTRA. Accordingly, I am sending him via Federal Express, a copy of the confidential CARP Report so that he can respond to my request.

I have been informed that DMX has changed counsel and is now represented by Peter Laird. Mr. Laird asked to see a copy of the confidential CARP Report in order to

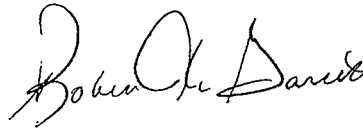
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April 19, 2001

Page 2

consider our request. Along with this letter, I am providing Mr. Laird with a copy of the Protective Order in Docket No. 96-5 CARP DSTRA, and I am requesting him to execute the certificate required by that Order. When I receive the certificate, I will provide him with a copy of the Confidential Report. If this procedure is not acceptable to you, please notify me before Monday, April 23, 2001.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert Alan Garrett".

Robert Alan Garrett

cc: Bill Roberts